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IT IS SO ORDERED.

Dated: July 01, 2009


Burton Perlman
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In Re:	:	Case No. 08-13059
	:	
	:	
Cleaster Mims College Preparatory School, Inc.	:	Judge Burton Perlman
	:	
	:	
Debtor and Debtor-in-Possession	:	Chapter 11
	:	

ORDER DENYING CONFIRMATION

The Debtor, Cleaster Mims College Preparatory School, Inc., filed a voluntary petition in Chapter 7 Bankruptcy on June 5, 2008. On August 5, 2008, the case was converted to Chapter 11. The Debtor is a non-profit corporation operating as a school which educates children from preschool through primary school. The Debtor has filed a plan, disclosure statement, an amended plan ("Plan") and an amended disclosure statement ("Disclosure

Statement"). The secured creditor, JPMorgan Chase Bank, N.A. ("Chase") has filed an objection to confirmation of Debtor's Plan.

1. Facts

The Debtor's namesake, Cleaster Mims, is the founder and principal of the Debtor corporation. Mrs. Mims is actively involved in the Debtor's day to day business operations and educational component. Debtor owns two real estate locations. One property is 7855 Dawn Ave. ("Dawn Property"). The Dawn Property is subject to two mortgages in favor of PNC Bank ("PNC"). The Debtor and PNC have entered an Agreed Order in regards to the Debtor's Plan and Disclosure Statement. Debtor regularly conducts a primary school, grades one through four at this location. This is funded by a county voucher program.

The Debtor owns a second property, 7660 Belkenton Ave. ("Belkenton Property"). The Belkenton Property is subject to two mortgages in favor of the objecting creditor, Chase. Debtor carried on a boarding program there. That program was funded by State of Ohio vouchers. It served underprivileged children to the eighth grade.

During the 2006-2007 school year, the Debtor lost it's eligibility to receive funding from the Ohio voucher program. These state-funded vouchers represented 60-70% of the Debtor's revenue. The Debtor lost the voucher funding due to alleged noncompliance with certain procedures required by the Ohio voucher program. The Belkenton property is presently not regularly occupied. It is occasionally rented for fund-raising and religious events.

Due to the decreased revenue, the Debtor was unable to meet it's mortgage obligations to Chase. Chase subsequently foreclosed on the Belkenton Property and on

August 6, 2007 obtained a judgment. Chase's ability to sell the Belkenton Property was stayed by the institution of the present bankruptcy. Of the two mortgages Chase holds on the Belkenton Property, the first is for \$979,559.84 with monthly payments of \$7,029.01 with a final balloon payment due on August 28, 2015. The second is a line of credit for \$30,000. The parties agreed that the Belkenton Property is valued at \$1,300,000 and that Chase is an oversecured creditor.

Debtor's revenue was bolstered in 2006 when the Belkenton Property was leased to the Cincinnati Academy of Excellence ("CAE"). Because of this lease, Chase forbore from proceeding with its foreclosure. Unfortunately, CAE broke the lease and the Debtor has been unable to find a new tenant for the Belkenton Property, nor does it have any current prospects for leasing the Belkenton Property. There is currently outstanding a motion for relief from stay so that Chase may proceed to sale on its foreclosure of the Belkenton Property.

Chase objects to the Debtor's Plan on grounds that the Plan is not feasible.

2. Law - Feasibility.

Chase contends that Debtor's Plan does not satisfy the "feasibility test" under § 1129(a)(11). That Section provides:

(a) The court shall confirm a plan only if all of the following requirements are met:

....

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed by the plan.

A plan proponent has the burden of showing compliance with this statutory section. In re M&S Assoc., Ltd., 138 BR 845, 848 (Bankr. W.D. Tex. 1992).

“Feasibility is fundamentally a factual question since it necessarily depends upon a determination of the reasonable probability of payment.” Gen. Elec. Credit Equities, Inc. v. Brice Rd. Dev., L.L.C. (In re Brice Rd. Dev., L.L.C.), 392 B.R. 274, 282-283 (B.A.P. 6th Cir. 2008) (citing In re Howard, 212 B.R. 864, 878 (Bankr. E.D. Tenn. 1997)). In order to be feasible pursuant to § 1129(a)(11), “[t]he plan does not need to guarantee success, but it must present reasonable assurance of success.” Id. (citing reference omitted). To sufficiently establish reasonable assurance the, “plan must provide a realistic and workable framework for reorganization.” Id. In In re Chadda, 2007 WL 3407375 (Bankr. E.D. Pa. 2007), at para 6, the court quoted with approval the following from In re Trevarrow Lanes, Inc. 183 B.R. 475, 482 (Bankr. E.D. Mich. 1995):

A critical issue in assessing the feasibility of a plan which provides for the debtor’s continued operation is whether the debtor can generate “sufficient cash flow to fund and maintain both its operations and obligations under the plan.” In re SM 104 Ltd., 160 B.R. 202, 234 (Bankr. S.D. Fla. 1993). The income projections must be based on concrete evidence of financial progress and must not be speculative, conjectural or unrealistic.” In re Sound Radio, Inc., 103 B.R. 521, 524 (D.N.J. 1989), *aff’d*, 908 F.2d 964 (3d Cir. 1990).

3. Discussion

After careful consideration the Court has concluded that Debtor’s Plan is not feasible when funding for the Belkenton Property is considered. Funding for the operation of Dawn Road is available. The Belkenton Property operation is to be funded by several revenue

sources. These sources are: (1) rental revenue from the Belkenton Property, (2) Ohio voucher income and (3) fund-raising.

We have already noted that Debtor has no current prospect as a tenant for the Belkenton Property.

The Debtor's business plan for 2009 (Debtor's Exhibit 1), assumes that Ohio voucher eligibility will be granted and begin generating revenue for the Debtor by the 2010-2011 school year. Further, the Debtor assumes that it will have a class size of 60 students eligible to have their schooling funded through this program. However, even if eligibility to the Ohio voucher program is granted, Debtor could not say when income from that source would become available.

As to fund-raising, Debtor has little to no experience in generating the large amount of money through fund-raising that the Debtor's business Plan relies upon. Debtor's 2009 business plan requires \$170,000 in fund-raising revenues. This increases to \$300,000 by the 2013-2014 school year.

The Debtor's monthly operating reports for January 2009 through April 2009 indicate that the Debtor has raised only \$10,095.13 through fund-raising. This would annualize to about \$30,000.00.

Further, the Debtor has been promoting a "Ten Thousand Dollar a Month Club", asking for donors to donate \$10 monthly. To reach the goal of \$10,000 a month, the Debtor needs 1,000 monthly donors. Debtor's evidence was that it currently has approximately 15 such donors.

The record before us shows that the Belkenton property has no present prospect of producing income. The Debtor's lack of evidence that it will be eligible for the Ohio voucher

program, in conjunction with the inability to have available revenue from that source for some indefinite period, makes the Ohio voucher income speculative. Finally, the evidence regarding fund raising shows no prospect for providing funds in necessary amounts to Debtor.

This review of the record persuades the Court that Debtor has not presented “a realistic and workable framework for reorganization” which includes the Belkenton property. Funding prospects are entirely speculative.

Debtor presented testimony regarding a Ron Wegmann and has referred to him in a request for additional time. It was represented to the Court that Wegmann was going to support the Debtor financially, and would assist in making the fund-raising efforts successful. In its request for additional time, Debtor submitted a business plan which would be implemented when Wegmann becomes available. The new business plan, however, does not show any infusion of money by Wegmann. It does not differ substantially from the business plan presented at trial.

For the above reasons, confirmation of the Debtor’s Plan is denied.

SO ORDERED.

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